



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13051148
[REDACTED]

[REDACTED],
Complainant,

v.

KINDRED NURSING CENTERS LIMITED PARTNERSHIP d/b/a KINDRED TRANSITIONAL CARE AND
REHABILITATION – GREENFIELD,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(c).

On May 2, 2013, [REDACTED] (“Complainant”) filed a Complaint with the Commission against Kindred Nursing Centers Limited Partnership d/b/a Kindred Transitional Care and Rehabilitation - Greenfield (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]

[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds as follows:

The issue presented to the Commission is whether Complainant was denied employment because of her disability. In order to prevail, Complainant must show that: (1) she belongs to a protected class; (2) she meets the minimum qualifications for the position; (3) the position was rescinded; and (4) a less-qualified, non-disabled applicant was selected for the position or the position remained open.

It is evident that Complainant is a member of a protected class as Respondent perceived her to be a person with a disability and that Respondent offered Complainant the position of cook on or about March 22, 2013. However, Respondent rescinded the offer after learning that Complainant suffered from carpal tunnel and hired an individual without a perceived disability.



By way of background and at all times relevant to the Complaint, Complainant has worked as a cook for various employers including Respondent before a change of management. In March 2013, Complainant applied for an open cook position with Respondent. At all times relevant to the Complaint, the position required the selected individual to serve and prepare food for approximately 145 residents, lift, push, and/or pull up to 20 pounds, and occasionally, up to 50 pounds. Complainant asserts and Respondent admits that Complainant was recommended for hire and evidence shows that on or about March 22, 2013, Complainant was offered the job subject to a health screening. While Complainant did not reveal she suffered from carpal tunnel during the interview, the condition was discovered during a routine medical screening on or about March 28, 2013. Specifically, the examiner determined that Complainant was “symptomatic with repetitive wrist motion activity,” and should “avoid activity that requires repetitive movements of the right wrist.” However, the examiner also noted that “reasonable accommodation for the above condition (*if needed*) would be use of a wrist brace when working. (emphasis added)” Ultimately, Respondent rescinded the position asserting that Complainant could not perform the essential functions of the position and offered the position to an individual not perceived to suffer from a disability.

Despite Respondent’s assertions, there is sufficient evidence to believe that an unlawful discriminatory act occurred as alleged. Specifically, Complainant asserts and evidence shows that Respondent failed to engage in the interactive process with Complainant as required under the applicable laws prior to rescinding her job offer. Moreover, no evidence has been provided by Respondent to show that Complainant was unable to meet the essential functions of a position substantially similar to the one she previously held with Respondent in the past. It is also important to note that Complainant asserts she has never worn a brace while working as a cook in the past. While the examiner’s notes clearly noted that a brace would be helpful in the event Complainant’s condition became problematic, no evidence has been submitted or provided by Respondent to assert that a brace is the only option to alleviate Complainant’s condition. As such and based upon the aforementioned, Respondent’s failure to engage in the interactive dialogue process is a violation of the laws as alleged and probable cause exists to believe that Respondent’s behavior constitutes an unlawful practice as prohibited under the law.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 1, 2014
Date

Akia A. Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission